

**ADMINISTRATIVE ORDER NO. 53-05-02-F**  
**of the**  
**City Manager**  
**City of Eugene, Oregon**

**ADOPTION OF CITY RENTAL HOUSING CODE ADMINISTRATIVE  
RULE R-8.430**

**The City Manager of the City of Eugene finds that:**

**A.** Section 2.019 of the Eugene Code, 1971 (“EC”), authorizes the City Manager to adopt rules for implementation of any provisions of that Code. In addition to that authority, EC 8.430 specifically authorizes the City Manager to adopt rules with respect to the City’s Rental Housing Code set forth in EC 8.405 through 8.440, which were adopted by Ordinance No. 20329, effective December 30, 2004.

**B.** Pursuant to that authority, on April 27, 2005, the City Manager issued Administrative Order No. 53-05-02 proposing the adoption of City Rental Housing Code Administrative Rule R-8.430.

**C.** Notice of the proposed amendment was published in the Register-Guard, a newspaper of general circulation within the City, on May 2, 3, 4, 5, and 6, 2005, and made available to any person who had requested such notice. The Notice provided that written comments would be received for a period of 30 days from the first publication date. Two letters containing comments were received to which I make the following findings:

**COMMENT 1:** A letter dated May 15, 2005, was received from William F. Bunting who submitted comments which are summarized in (1) through (6) below, to which I make the following findings:

**(1)** All references to ten-day notice periods need to be extended by three days when the subject notice is served by first class mail, to allow time for delivery.

**Finding:** Provisions of the Rental Housing Code impose specific requirements for certain actions, such as completing repairs, to occur within a 10 day period, and the City cannot change these requirements by rule. However, pursuant to EC 8.430(5)(a)4, the Code provides that owners who may need to make substantial repairs that cannot be completed within a 10 day period may submit for the City's approval an alternative schedule. Therefore, no changes are being made to the Rule as a result of this comment.

**(2)** There should be a provision to allow neighbors, other property owners, etc., to submit a complaint.

**Finding:** The complaint process adopted by EC 8.430(2)(b) requires that the complainant must be a party to the current rental agreement covering the property in question or an agent of the party. Therefore, no changes are being made as a result of this comment.

(3) Information submitted by a renter should include a copy of the rental agreement to prove standing.

**Finding:** Rule R-8.430-D-2 requires submission of a copy of the rental agreement, but also authorizes other documentation for tenants who have not entered into a formal rental agreement. This is consistent with the Code's definition of "Rental Agreement." Therefore, no changes are being made as a result of this comment.

(4) The inspector performing an investigation of the specific complaint should have the flexibility to identify and cite other violations that the inspector finds in the investigation. Inspectors should also be able to perform nuisance violations, zoning violations, dangerous building violations and other relevant/related violations.

**Finding:** EC 8.430(2) and (3) limit investigations of Rental Housing Code violations to those alleged in a complaint filed by the tenant or the tenant's agent. The City Manager or the Manager's designee already has authority under other provisions of the Eugene Code and administrative rules to investigate and cite other types of code violations, including nuisance violations, zoning violations, building code violations. Therefore, no changes are being made as a result of this comment.

(5) The following sentence should be added to the end of the present language contained in R-8.430-D-4: "This decision shall be final and not subject to appeal."

**Finding:** EC 8.430(3)(c) and the current version of R-8.430-D-4 state that if the City Manager determines the complaint is not valid, the case shall be closed, which makes it clear that the City Manager's action is final. Because the Code does not grant the right to appeal this decision, adding the suggested language is unnecessary. Therefore, no changes are being made as a result of this comment.

(6) The City's outreach about the program, which should be thorough and repetitive, needs to take place, after which an owner should not be allowed to claim that he did not know about the program.

**Finding:** The City has engaged in ample outreach efforts regarding the Rental Housing Code and a lack of knowledge regarding the program does not provide an owner with a defense for failing to comply with the Code requirements, nor should it be considered when calculating the amount of an administrative civil penalty for an owner's noncompliance with a city-issued notice and order. Therefore, the Rule has been revised to remove an owner's lack of knowledge regarding the Rental Housing Code requirements from the formula used to calculate the amount of an administrative civil penalty.

**COMMENT 2:** A letter dated May 31, 2005, was received from Jon Tronrud of the Rental Owners Association who submitted comments which are summarized in (1) through (5) below, to which I make the following findings:

(1) All references to ten-day notice periods need to be extended by three days when the subject notice is served by first class mail, to allow time for delivery.

**Finding:** See Finding to Comment 1, number (1) above. No changes are being made to the Rule as a result of this comment.

(2) Owners have a right to be notified at least 48 hours prior to any City inspection of their property.

**Finding:** EC 8.430(4) requires the City provide notice to owners not less than 24 hours before conducting a scheduled inspection. Therefore, no changes are being made as a result of this comment.

(3) Language should be added that protects owners or owner's agents who are acting in good faith from undue penalty due to tenant caused damage and/or damage related to acts of God such as floods, earthquakes, volcanic eruptions, wind storms, etc.

**Finding:** The stated purpose of the City's Rental Housing Code is to provide minimum habitability criteria to safeguard health, property and public wellbeing of the owners, occupants and users of rental housing. It is intended to supplement rather than conflict with the habitability standards of the State of Oregon Residential Landlord and Tenant Act (ORS Chapter 90). In accordance with ORS Chapter 90, it is the responsibility of the landlord to ensure habitability of the unit regardless of the cause of damage. However, to the extent allowed by ORS Chapter 90, the landlord and tenant may enter into an agreement to address damages caused by tenant. The Rental Housing Code is not intended to enforce these types of private rental agreements.

Additionally, pursuant to EC 8.430(5)(a)4, the City Manager may extend the deadline for a landlord to complete any necessary repairs that may be caused by acts of God such as floods, earthquakes, etc., thereby avoiding undue penalties to landlords acting in good faith. Therefore, no changes are being made as a result of this comment.

(4) The formula for determining administrative civil penalties under R-8.430-F may potentially result in unreasonable or excessive penalties; suggested changes to the formula; and suggested that a more reasonable range of fees would be a \$60 minimum to a \$300 maximum per day.

**Finding:** The formula for calculating administrative civil penalties under R-8.430-F is compliant with the requirements for calculating administrative penalties contained in EC 2.018, and Administrative Rule R-2.018 adopted by Administrative Order No. 53-00-03-F. Therefore, no changes are being made as a result of this comment.

(5) A mission statement should be included that specifies that City staff's first goal is to facilitate the correction of any violation as expediently as possible; that City staff shall not advocate for either party; and that City staff should be encouraged to mediate as a neutral party between tenants and landlords in the interest of rectifying any violation as quickly as possible.

**Finding:** The purpose of the Rental Housing Code has been adopted in EC 8.405. Therefore, no changes are being made as a result of this comment.

**D.** In addition, during the comment period, Planning and Development Division staff recommended changes (1) through (4) below, to which I make the following findings:

(1) The name of the person filing the complaint should be added as required information in the Complaint form (R-8.430-D-2).

**Finding:** Changing the Complaint form does not require a change to the Rule, and therefore, no change is being made to the Rule to address this comment.

(2) A deadline of no later than May 31 for submitting registration forms should be established, which would allow staff time to update the database and send out bills before the next billing cycle which begins on July 1<sup>st</sup>. In addition, a deadline should be established for submitting change of ownership and/or change in units within 30-days of change.

**Finding:** Since a deadline of May 31 for submitting a registration forms has passed, the language in the Registration section, R-8.430-B, is being changed to reflect that registration forms are to be submitted within 30 days of the date of the establishment of a rental unit, change of ownership of a rental unit, or change in the number of units available for rent. For existing rental units subject to the City's Rental Housing Code, the registration forms shall be submitted within 30 days of the date of this Order.

(3) R-8.430-B-3 should be deleted because registration forms should be received prior to requesting fee payment. Receiving registration forms in advance of billing would allow staff time to update the database and mail billing statement to the owners or responsible party.

**Finding:** R-8.430-B-3 is being amended to omit the requirement that the fee be submitted with the registration form.

(4) Processing billing and payments should be addressed by including that payment notice will be sent to the responsible party designated on the registration form, that the responsible party will submit payment by the date specified in the written notice, and that late fees will be assessed for each month thereafter in which the annual fee is not paid.

**Finding:** R-8.430-B-3 is being amended to add that the owner or the owner's agent shall pay the registration fee in the manner described in the payment notice. The Administrative Order setting the Rental Housing Code registration and Appeal Fees establishes that late fees will be assessed for payments not received by the date in the payment notice, and therefore, no changes are being made to address the issue of late fees.

**E.** Finally, I find that R-8.430-D-2 and 3 should be amended to be consistent with R-8.430-D-1, by using the term "tenant or tenant's agent" rather than "tenant."

Based on the above findings and the findings contained in Administrative Order No. 53-05-02, which are hereby adopted, and pursuant to the authority of EC 2.019 and 8.430, I adopt City Rental Housing Code Administrative Rule R-8.430 to provide as follows:

## **CITY RENTAL HOUSING CODE ADMINISTRATIVE RULE R-8.430**

### **R-8.430-A    Definitions.**

As used in these rules, words and phrases have the meaning set forth in Section 8.415 of the Eugene Code, 1971 ("EC").

**R-8.430-B     Registration.**

1. The owner, or the owner's agent shall register every dwelling unit subject to the City's Rental Housing Code as required by EC 8.440. The registration form shall be provided by the City, and multiple units under the same ownership may be included on one form.

2. The registration form shall include:

(a) The names and addresses of all owners of the building or unit, and the name and address of the owner's agent, if applicable;

(b) The address of the rental unit, or of the building, if it includes multiple rental units;

(c) The total number of rental units if the building contains multiple units;

(d) The mailing address for the owner(s), and the owner's agent, if different than the information provided in (a) above;

(e) The telephone number(s) or other information for contacting the owner(s) and the owner's agent;

(f) The identifier of any unit exempt from the registration fee requirement under EC 8.440(3), together with documentation that supports the exemption; and

(g) The name and address of the owner's agent for service if the owner(s) does not reside within the state of Oregon.

3. The registration form shall be submitted within 30 days of the date of the establishment of a rental unit, change of ownership of a rental unit, or change in the number of units available for rent. For existing rental units subject to the City's Rental Housing Code, the registration form shall be submitted within 30 days of the date of this Order. The fee established by Administrative Order of the City Manager for each rental unit not exempt under EC 8.440(3), shall be payable by the owner or owner's agent within the time and in the manner provided in the payment notice.

**R-8.430-C     Applicability of Standards.**

1. The standards in EC 8.425 apply to all rental housing located within the Eugene city limits, unless exempt under EC 8.410(2).

2. Although the following types of units are exempt from the requirement to pay the registration fee under EC 8.440(3), they are subject to compliance with the standards of EC 8.425 and the registration requirements of R-8.430-B:

(a) A rental unit with a recorded deed restriction requiring the unit to be rented affordably to households at or below 60 percent of the Area Median Income; and

(b) A rental unit that has been approved by the City for an exemption from property taxes pursuant to EC 2.910 to 2.922 and 2.937 to 2.940 for the duration of its exemption, or that is recognized by the City as exempt from property taxes pursuant to ORS 307.092.

**R-8.430-D     Complaint Procedure.**

1. At least ten (10) days prior to filing a complaint with the City, a tenant or the tenant's agent who believes a violation of the City's Rental Housing Code exists shall provide a written notice of the alleged violation to the owner or the owner's agent, as required by EC 8.430(2). The notice shall be mailed by first class mail or hand delivered to the owner or the owner's agent.

2. If the owner fails to respond to the tenant or tenant's agent within the ten (10) day period, the tenant or tenant's agent may file a complaint with the City. The complaint shall be on a form provided by the City and shall contain all of the following information:

- (a) The name and address of the tenant and the tenant's agent, if applicable;
- (b) The tenant's and the tenant's agent's mailing address, if different than (a) above;
- (c) The telephone number(s) at which tenant and tenant's agent can be reached;
- (d) The address at which the alleged code violation(s) exists;
- (e) A description of the alleged code violation(s); and
- (f) The date on which written notice of the alleged code violation was mailed or personally delivered to the owner or the owner's agent.

The tenant, or the tenant's agent shall submit with the complaint a copy of the written notice provided to the owner and copies of an identification card, bill, rental agreement, or other items that demonstrate that the tenant is a party to a rental agreement at the address identified in the complaint.

3. The City Manager shall review the complaint and documentation submitted under paragraph 2 above, and upon a determination that:

- (a) The tenant or the tenant's agent has standing to file the complaint;
- (b) The alleged violation could constitute a violation of the City's Rental Housing Code; and
- (c) More than ten (10) days have elapsed between the tenant's or the tenant's agent's notice to the owner and the filing of the complaint, and the owner failed to respond, the City Manager shall provide written notice of the complaint to the owner or the owner's agent. The notice shall be sent by first class mail within five (5) business days from the date the complaint was filed with the City and shall include a copy of the complaint, the City Manager's written finding of potential validity of the complaint, and a statement indicating that an investigation will be initiated. The notice shall include the name and telephone number for the City staff contact.

4. Within ten (10) business days of the date the complaint is filed with the City, and subsequent to mailing the notice under paragraph 3 above, the City Manager shall initiate an investigation of any complaint found to be a potentially valid complaint unless prior to that time the complaint is withdrawn in writing by the tenant or tenant's agent. If the investigation results in a determination that the complaint is not valid, the City Manager shall notify all parties of that determination and the case shall be closed.

**5.** If the investigation results in a determination that the complaint is valid, the City Manager shall issue a written order and forward it by first class mail to the owner or the owner's agent, and to the tenant or the tenant's agent. The order shall include the following:

- (a) The complete address where the alleged violation has occurred;
- (b) A statement that the City Manager has found the premises to be in violation of EC 8.425, and a detailed description of the violation(s);
- (c) A requirement that the owner complete the required repairs within ten (10) days from the date of the order, unless the City Manager determines the repairs cannot be completed within that period of time, in which case the owner or owner's agent shall, within the ten (10) day period, submit a compliance schedule for completion of the repairs that is accepted by the City;
- (d) A statement advising the owner of the potential enforcement action that may result if the owner or the owner's agent fails to complete the repairs by the stated deadline;
- (e) A statement advising the owner of the right to appeal the notice and order, and the procedure for doing so; and
- (f) The date after which a reinspection will be scheduled to determine compliance.

**R-8.430-E Appeal.**

The owner or owner's agent upon whom an order is served under EC 8.430, against whom an administrative civil penalty is imposed, or other enforcement action taken under the City Rental Housing Code, shall have the right to appeal within the time and manner provided in EC 2.021. The appeal shall be accompanied by the required Appeal Fee.

**R-8.430-F Determination of Amount of Administrative Civil Penalty.**

**1.** If an administrative civil penalty is imposed for failure to comply with the notice and order issued pursuant to EC 8.430(5), the amount to be assessed shall be determined in accordance with the following formula:

- (a) The dollar amount of the penalty per day per violation is calculated by multiplying the amount of the BASE (subsection (b)) by \$20. Notwithstanding this formula, the maximum assessment for a violation per day shall be \$2,000.
- (b) The BASE is the sum of "E" and "P" where:
  - (1) "E" is the effort made by the owner or the owner's agent in taking all feasible steps necessary and appropriate to correct the violation. The value of "E" shall be:
    - a. 1, if the owner or owner's agent has made an active attempt to correct the violation by making required repairs.
    - b. 3, if the owner or owner's agent has made minor attempts to correct the violation by making required repairs.
    - c. 5, if the owner or owner's agent has taken little or no action to correct the violation by making required repairs.

(2) “P” is the frequency of prior violations of ordinances, rules, orders or permits attributed to the owner or owner’s agent. The value of “P” is based on prior similar violations as verified as valid, regardless of whether enforcement action was taken. For the purposes of this rule, similar violations shall be violations of Chapter 8 of the Eugene Code, 1971, and rules, orders and permits issued under or related to that Chapter. The value of “P” shall be:

a. 5, if the present violation is the first violation by the owner or the owner’s agent, within 24 months of the date of issuance of the notice.

b. 20, if the present violation is the second violation by the owner or the owner’s agent, with 24 months of the date of issuance of the notice.

c. 35, if the present violation is the third violation by the owner or the owner’s agent within 24 months of the date of issuance of the notice.

d. 50, if the present violation is the fourth or subsequent violation by the owner or the owner’s agent within 24 months of the date of issuance of the notice.

**R-8.430-G Penalty.**

Pursuant to EC 8.995, failure to comply with a notice and order issued under EC 8.430(5) shall be subject to the imposition of an administrative civil penalty under EC 2.018, computed as set forth in R-8.430-F above, and/or a fine imposed by the Eugene Municipal Court in an amount not to exceed \$250 per violation. Each day a violation exists constitutes a separate violation for which an additional penalty may be assessed.

**Dated and effective this \_\_\_\_\_ day of July, 2005.**

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**Dennis M. Taylor**  
**City Manager**